



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office

222 North 32nd Street

P.O. Box 36800

Billings, Montana 59107-6800

IN REPLY TO

SDR-922-97-09

NDM-81407

NDM-81408

3165.3 (922.JA) P

SEP 09 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

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Bruce Anderson

Oil and Gas Properties

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SDR No 922-97-09

AFFIRMED IN PART, REMANDED IN PART

Mr. Bruce Anderson (Anderson) requests a State Director Review (SDR), of a Decision (Enclosure 1) to deny his request for a suspension of operations and/or production (SOP), issued by the Dickinson District Office (DDO) on August 5, 1997. The SDR request was considered timely filed on August 25, 1997, in accordance with 43 CFR 3165.3(b), and assigned number SDR-922-97-09.

Anderson requested an SOP under 43 CFR 3165.1 and 3103.4-4 for two leases (NDM-81407 and NDM-81408) on August 4, 1997 (Enclosure 2). Two leases were included in Anderson's request because they were both involved in his application for designation of a proposed unit area under unitization provisions of the Mineral Leasing Act, as amended. This unit application was subsequently approved by the Bureau of Land Management (BLM), Montana State Office on August 22, 1997. The primary term of the affected leases expired on August 31, 1997.

Anderson filed a Notice of Staking (NOS) on July 29, 1997, to drill a well (Bruce Anderson Trailside Unit #1) on NDM-81408. The NOS for the Bruce Anderson Trailside Unit #1 well was filed on July 30, 1997 (Enclosure 3). The discrepancy regarding the filing date occurs because the original NOS was submitted unsigned. The DDO informed Anderson's consultant that the NOS would not be accepted without a signature. An NOS with a signature dated July 29, 1997, was received in the DDO the following day, on July 30, 1997. The proposed well is on surface estate managed by the United States Forest Service (USFS). According to the regulations at 43 CFR 3162.3-1(h), the surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. The USFS sent a scoping letter (Enclosure 4) to interested citizens and groups on August 1, 1997. The scoping process is used to determine the range and significance of issues as they relate to Anderson's well proposal on National Forest System lands. Comments were asked to be returned to the USFS by August 15, 1997. After comments are received, the USFS determines how they will process the well proposal. This determination has a direct affect on how long it will take to process the review of the Surface Use Plan by the USFS and the Application for Permit to Drill by the Bureau of Land Management (BLM). Anderson believes that an SOP in the interest of conservation should be granted because the surface use plan of operation cannot be approved before lease expiration based on issues related to his well proposal and advice from the USFS.

Anderson also believes he should receive a suspension of operations because a drilling rig will not be available before expiration of the lease for reasons beyond his reasonable control, despite his diligence. Anderson believes he has acted diligently because complete control in the subject leases was not reassigned to him until May of 1997.

The DDO Decision to deny Anderson's request for a SOP is focused on whether or not the lessee was prevented from operating on the lease despite the exercise of due care and diligence. The DDO stated that an APD may not be approved until passage of a 30-day posting period. The posting period is a provision of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Considering the NOS filing date and posting period, the DDO stated that the earliest an APD could be approved would be August 29th, allowing 2 days to construct an access road and well pad, and commence drilling operations. Based on these findings the DDO decided to deny Anderson's request because operations have not been conducted diligently. The DDO also stated that there were opportunities for Anderson to file an NOS after he regained control of the leases in May 1997 or before, when it appeared that the assignees would not develop the subject leases. Filing of an NOS at these points could have been considered diligent, according to the DDO.

Anderson's request for an SDR (Enclosure 5) claims that the DDO applied the wrong standard when it evaluated his August 4, 1997, suspension request. The following points included with Anderson's SDR request support this claim.

Section 39 of the Mineral Leasing Act, 30 U.S.C. §209, authorizes the Secretary to grant a suspension of operations and production "in the interest of conservation." In addition, Section 17(i) of the Mineral Leasing Act, 30 U.S.C. §226(i), provides that no lease shall expire because operations or production are suspended under order of, or with the consent of, the Secretary. Bruce Anderson's suspension application requests a suspension under both Section 39 and Section 17 as both sections independently authorize suspension of the lease in this circumstance. The request for a SOP under Section 39 of the Mineral Leasing Act, as amended was not addressed by the DDO. Anderson requested a suspension under the authority of Section 17 to provide time for obtaining the services of a drilling rig after approval of the APD. Anderson states that the DDO's Decision based on his lack of diligence is wrong for two reasons. First of all, the suspension of operations because of the unavailability of a drilling rig will be necessary only after the APD and National Environmental Policy Act (NEPA) compliance delays terminate. Second, there is nothing in the regulations, the onshore orders, or the BLM's Manual to suggest that a lessee may not be granted a suspension of operations when the request for the suspension is made only a little more than a month before the expiration of the lease term.

This review raises the principal question whether the DDO properly denied the request for an SOP under oil and gas leases NDM-81407 and NDM-81408, filed before the lease expiration dates.

The regulations at 43 CFR 3103.4-4(a) include provisions for both Section 39 and Section 17(i) suspensions. This section of the regulations also sets the standard for granting a section 17(i) suspension. Such a suspension may be granted where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee.

Anderson's Section 17(i) request for a suspension of operations is the second part of a two-part effort to suspend his leases. This second part is premature at this time. We reach this conclusion because the need to suspend the leases to acquire the services of a drilling rig will only be necessary if no drilling rigs are available when Anderson has an approved APD. The

affidavit of Lisa Smith (Enclosure 6) states that the USFS would have to conduct an environmental assessment (EA) for Anderson's well proposal and it would take at least 3 months to complete the EA and approve the surface use plan. If the APD is approved some time in the future, there would still be ample time to contact other drilling contractors before there is any opportunity to commence drilling operations, and time to file a request for a suspension of operations if no drilling rigs are available. Therefore, we affirm the portion of the DDO's decision that results in a denial of Anderson's Section 17(i) request for a suspension of operations.

The request for a SOP under Section 39 of the Mineral Leasing Act, as amended was not addressed by the DDO. The Interior Board of Land Appeals (IBLA) has determined that Section 39 of the Mineral Leasing Act provides for suspension either as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded, or as a matter of discretion, in the interest of conservation (Nevdak Oil and Exploration, Inc., 104 IBLA 133). The term "interest of conservation" may include time to comply with the NEPA and decide whether and under what circumstances to permit exploration and development of mineral resources to best protect other resources. We, therefore, remand this case to the DDO to process Anderson's SOP request. An SOP in the interest of conservation is necessary to allow time for the USFS to complete the NEPA process.

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 7). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 3165.4(c), the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in this Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4 Whether the public interest favors granting the stay.

/s/ Thomas P. Lonnie

Thomas P. Lonnie
Deputy State Director
Division of Resources